

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

MICHAEL S. TOMASZEWSKI,

Case No: 20-10203-CLB

Debtor.

**STIPULATION AND ORDER CONCERNING NON-DISCHARGEABLE DEBT OF
ANN FENIELLO, MARION PICKERT AND VIRGINIA STEINBRENNER**

WHEREAS, Debtor Michael S. Tomaszewski ("Debtor") filed a voluntary petition pursuant to Title 11 U.S.C., seeking Chapter 11 Bankruptcy Relief on February 5, 2020.

WHEREAS, an order was entered converting the case to a Chapter 7 case on March 16, 2021.

WHEREAS, the Debtor owned, operated and served as the funeral director of Michael S. Tomaszewski Funeral and Cremation Chapel, LLC located in Batavia, New York. The Debtor was licensed and registered under New York law. The funeral home is no longer operating.

WHEREAS, under Section 453 of New York's General Business Law, a funeral home and a funeral director accepting a pre-need deposit is required to place the deposit into a segregated interest-bearing account bearing the name of the depositor client.

WHEREAS, the funeral home and funeral director (in this case the Debtor) was required to provide notice of the establishment of that account and periodic notice of the interest earned on the same to the depositor or depositors whose pre-need deposits were accepted.

WHEREAS, claimant Ann Feniello, through her power of attorney Paula Savage, filed a proof of claim for a pre needs deposit in the amount of \$10,500.00 (proof of claim #43).

WHEREAS, claimant Marion Pickert, through her power of attorney Cynthia McDonald, filed a proof of claim for a pre needs deposit in the amount of \$8,000.00 (proof of claim #44).

WHEREAS, claimant Virginia Steinbrenner filed a proof of claim for a pre-needs deposit in the amount of \$8,000.00 (proof of claim #45).

WHEREAS, the first \$3,025.00 of each of the respective unrefunded consumer deposit claims is entitled to priority status under section 507(a)(7) of the Bankruptcy Code.

WHEREAS, each of the claimants above asserts that the debt owed to each of them is non-dischargeable under section 523(a)(4) of the Bankruptcy Code.

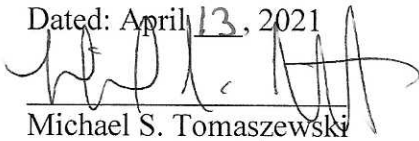
WHEREAS, each of the claimants above asserts that the debt owed to each of them is non-dischargeable under section 523(a)(2) of the Bankruptcy Code.

WHEREAS, each of the claimants above asserts that the debt owed to each of them is non-dischargeable under section 523(a)(6) of the Bankruptcy Code.

WHEREAS, the Debtor is subject to a pending criminal proceeding.

NOW, THEREFORE, Michael S. Tomaszewski and Barclay Damon LLP on behalf of each claimant herein, by affixing their signatures to this Stipulation and Order, agrees that the Court may enter an Order directing that the indebtedness owed to each claimant is non-dischargeable in this matter pursuant to sections 523(a)(2), 523(a)(4) and 523(a)(6) of the Bankruptcy Code.


Dated: April 13, 2021



Michael S. Tomaszewski

/s/ Beth Ann Bivona

Beth Ann Bivona, Esq.
Barclay Damon LLP on behalf of
Claimant Ann Feniello, through her power
of attorney Paula Savage;
Claimant Marion Pickert, through her power
of attorney Cynthia McDonald; and
Virginia Steinbrenner



David Ealy, Counsel to the Debtor

BASED UPON THE STIPULATION ABOVE, IT IS **SO ORDERED**,

1. that the debt owed to each of the claimants identified herein is non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4) and 523(a)(6);
2. that the indebtedness of \$10,500.00 owed to claimant Ann Feniello, through her power of attorney Paula Savage, is a pre-petition non-dischargeable debt in the amount of \$10,500.00.
3. that the indebtedness of \$8,000.00 owed to claimant Marion Pickert, through her power of attorney Cynthia McDonald, is a pre-petition non-dischargeable debt in the amount of \$8,000.00; and
4. that the indebtedness of \$8,000.00 owed to claimant Virginia Steinbrenner is a pre-petition non-dischargeable debt in the amount of \$8,000.00.

Honorable Carl L. Bucki
U.S. Bankruptcy Judge